IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1202 OF 2005

Dattatraya Krishnaji Ghule ... Applicant

versus

The State of Maharashtra & anr. ... Respondents

...

Mr.S.P. Kadam, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent No.1.

Mr.P.D.Gharat, for Respondent No.2.

WITH

CRIMINAL APPLICATION NO.1048 OF 2005

Hitendra Manohar Vichare ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. S.R.Pasbola, i/by Mr.N.G. Bane & Mr. Dheeraj Dhutmal, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for the Respondent State.

Mr. P.D. Gharat, for the C.B.I.

WITH

CRIMINAL APPLICATION NO.1666 OF 2005

Hitendra Manohar Vichare ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. S.R.Pasbola i/by Mr.N.G.Bane & Mr.Dheeraj Dhutmal, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for the Respondent State.

Mr.P.D. Gharat, for the C.B.I.

...

CORAM : A.M.KHANWILKAR,J.

13th April 2005

ORAL JUDGMENT :

01. All the three Applications are being disposed of together by this common Judgment, for the question involved is common. The Applicants - Accused - by these Applications have challenged the order passed by the trial Court (Special Judge under M.C.O.C.Act, Pune) permitting further

continued detention of the accused upto specified date, so as to enable the prosecution to submit final report with documents and its copies. The matter is brought before this Court in the following background.

02. The Applicants accused came to be arrested on 8th October 2004 in relation to offence registered as RC.10/2004/EOU-IV/New Delhi for offences under sections 259, 260, 261, 262, 263-A of the Indian Penal Code, based upon Crime No. 131/2001 of Police Station, Thane Nagar, Maharashtra. This case was registered by way of transfer/adoption of case/Crime No.131/2001 of Police Station, Thane Nagar, against Sandeep Krishna Kandar, George Thomas and others. The case was entrusted to C.B.I. for investigation. The case pertains to seizure of counterfeit revenue stamps and share transfer stamps worth Rs.51,390/- from one Sandeep Krishna Kandar, resident of Charlie Pereira Chawl, Amboli Village, Mahatar Pada, Andheri (West), in front of Khandelwal Sweets, Station Road, Thane, on 16th May 2001 at 2140 hours. After investigation, the Crime Branch submitted final

report against the said Sandeep Krishna Kandar and two others, namely, Hemant Dubey and George Thomas, on 12th June 2002, vide C.C.No. 211/2002. Another supplementary charge sheet was submitted against two more accused persons, i.e., Shabeer Mushtaq Ahmed and Shankar Gannappa on 25th March 2003. The third supplementary charge sheet was filed by the Thane Crime Branch against Shiv Shankar Kamleshwar Singh on 3rd April 2003. The Thane Crime Branch had also arrested M.D. Jadhav, Jacob Chako, Sheikh Mohamed Hussein Sheikh, Sirajuddin Nagipudi, Feroze Abdul Rehman Sheikh and Mohd. Yousuf Singutti at the time of handing over of the case to C.B.I.

03. After transfer of the case to C.B.I., during the investigation by C.B.I., it transpired serious involvement on the part of Thane Police led by Police Inspector Hitendra Manohar Vichare (Applicant in Criminal Application No.1048 of 2005 and Criminal Application No. 1666 of 2005) and Police Sub-Inspector Datta Ghule (Applicant in Criminal Application No. 1202/2005) in knowingly aiding and abetting of the Crime Syndicate headed by Abdul Karim Ladsab Telgi and

permitting the organised crime syndicate to carry on its unlawful activities for more than a year till the main accused persons were arrested in the Bund Garden Case. It is the prosecution case that by fabrication of evidence and by showing false recoveries, the State Government officials allowed the main culprits to escape and helped the organised crime syndicate of Telgi and his associates to flourish in Thane area in selling fake stamps through various gangs as found during investigation. It is not necessary to refer to further details of the prosecution case against the Applicants, for the nature of issue raised in the present Applications. Suffice it to observe that the Applicants are facing trial in respect of offence punishable under sections 120-B read with sections 109, 216, 218, 255, 259, 260, 261, 263, 263-A, 420, 471, 341 of the Indian Penal Code, read with section 63(a) and (b) of the Bombay Stamps Act and sections 3(1)(I)ii), 3(2), 3(4), 3(5), 4 and 24 of the Maharashtra Control of Organised Crimes Act, 1999 (hereinafter referred to as "the MCOCA") and sections 7, 12 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988.

04. As ninety days were likely to expire after the arrest of the Applicants on 8th October 2004, the Public Prosecutor submitted his report to the Special Judge in terms of proviso to sub-section (2) of section 167 of the Cr.P.C., read with section 21(2) of the MCOCA for extending the period to submit final report. The said report reads thus:

> " IN THE COURT OF SPECIAL JUDGE FOR MCOCA CASES, SHRI S.M.SHEMBHOLE, PUNE.
>
> State (CBI) Versus Sandeep Krishna Kandar & others in RC10/2004 EOU-VI/CBI/N.Delhi Crime No.PS 131/2001 of PS Thane Nagar, U/S 120-b r/w Sec. 109, 216, 218, 255, 259, 260, 261, 263(a), 420, 471, 34IPC r/w 63(a)&(b)of Bombay Stamp Act and Sec.3(1),i, ii, (2), 3(4), 3(5) & 4 & Sec 24 of the MCOC Act r/w sec.13(1)(d) of P.C.Act 1988.
>
> REPORT INDICATING THE PROGRESS OF THE INVESTIGATION AND THE SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED BEYOND THE SAID PERIOD OF 90 DAYS.
>
> MAY IT PLEASE YOUR HONOUR :
>
> I, Shri Pradip D. Gharat, the Special Public Prosecutor for CBI in Stamp related cases (Telgi cases) do hereby

most respectfully state and submit as under :

1) I say that I have called for a detailed Affidavit of the investigation officer in this case, viz., Shri S. Balasubramony, Dy.Superintendent of Police, CBI, EO-III, New Delhi, and he has informed me of progress of the investigation.

I) PROGRESS OF THE INVESTIGATION

(a) The investigation in this case was undertaken by Dy.SP Shri S.Balasubramony, on 2-4-2004 pursuant to the order of his superiors since the investigation in this case stood transferred to C.B.I. pursuant to the order of the Hon'ble Supreme Court dated 15-3-2004 in W.P.(Civil) No.522/2004, from Thane Crime Branch, Dist. Thane.

(b) Initially the offence was registered at Thane Nagar Police Station, Thane, vide Crime No.131/2001 on seizure of Revenue Stamps and Share Transfer Stamps worth Rs.51,390/- which were counterfeit in nature from one Sandeep Kandar, r/o Charlie Pereirra Chawl, Amboli Village, Matarpada, Andheri in front of Khandelwal Sweets, Station Road, Thane on 16.5.2001 at 21.40 hrs. The Crime Branch after completing investigation in the said case charge sheeted Sandeep Kandar and two other accused persons namely Hemant Dubey and George Hiwale on 12.6.2002 vide CC No.211/2002. Another supplementary charge sheet was submitted against two more accused persons Shabbir Mushtaq Ahmed and Shankar Ganappa on 25.3.2003. The third supplementary charge-sheet was filed by the Thane Crime Branch against Shiv Shankar Kamleshwar Singh on 3.4.2003. The Thane Crime Branch had also arrested MD Madhav, Jacob Chacko, Sheikh Mohd. Hussain and Sirrajuddin Nasipudi, Firoz Abdul Rehman Sheikh and Mohd. Yusuf Singutti at the time of

handing over of the case to CBI. Further investigation is in progress.

(c) The investigation by CBI disclosed that the present offence is the part of the conspiracy and the criminal activity of accused A.K.L. Telgi and his associates to counterfeit stamps and stamp papers and to dupe the government and the State Exchequer to the tune of thousands of crores of Rupees. The activity has been disclosed as the illegal business of the prime accused A.K.L. Telgi and his associates, and the subject of the organized crime. Hence, the provisions of MCOCA have been applied in this case.

(d) As divulged through the contentions of the IO, the further investigation has disclosed huge ramifications and the investigation is at a crucial stage. The investigation of CBI has disclosed the involvement of the police officers who had investigated the offence and that the officers who were supposed to bring the truth on record and book the real offenders, have in fact, actively connived with the prime accused A.K.L. Telgi and his associates to facilitate the smooth operation of his organized criminal activity of counterfeiting stamps and stamp papers and have furthered the said illegal business.

(e) The hint of something irregular was observed during the course of interrogation of the witnesses. It was also felt that the investigation of the case was not carried out in a proper manner as shown in the records taken over. The most glaring aspect that was felt was that none of the officers who had conducted the investigation of the case, had thought it worthwhile to find out the source of stamps found in possession of Sandeep Kandar on 16.5.2001 or the stamps that were recovered from his residence. When the officers were

questioned on this point, they could not give any satisfactory reply. The investigation revealed that the stamps were forged and resembled the make of stamps seized in PS Bund Garden case and therefore the source should be the same for these stamps. However, the entire investigation conducted by the State Police could not make it clear as to from where Sandeep Kandar had purchased the stamps in his possession, except for a vague statement that he used to purchase from 2 or 3 vendors and sell it to Shabbir, a key Telgi aide. The previous investigation was not satisfactory so as to reply as to why Shabbir Mushtaq Ahmed Sheikh, a key Telgi associate, who was dealing in the sale of forged stamps should purchase stamps from a small time vendor like Sandeep Kandar. When these observations came into light, it was felt that a deeper probe was required into the matter. The initial investigations conducted by the Thane Crime Branch smelt something fishy which required a deeper probe.

(f) Investigation has conclusively proved the presence of Shabbir Ahmed in the Thane Crime Branch during the week of 16.5.2001 by independent witnesses and the evidence given by them.

(g) Evidence against the police officers has been collected during the course of further investigation conducted. It has clearly been established that they have actively aided and abetted the Organized Crime Syndicate headed by AKL Telgi. It is clearly seen that Shabbir Mushtaq Ahmed who was key Telgi aide was in custody of the Thane Police during the period 16th May 2001 to 20th May 2001. This has been confirmed through the statements of witnesses. Further, the records of Station Diary collected from the Thane Police Station do not reflect the arrest of this accused meaning thereby he was kept in illegal custody.

Later, his arrest was reflected by taking his custody from the Bund garden Case. It is also clear that he had been allowed to escape from the Police Custody as his arrest was not shown in the initial stages. Further, the evidence has been collected to prove the role of Shabbir in this case as to be the main person who had supplied the stamps that were later seized by the Thane Police. He had lured Sandeep Kandar into the trap as Madhav working for Hemant Dubey so as to show Hemant Dubey a wanted accused. So the focus of investigation was deftly shifted from Shabbir to Hemant Dubey. The focus of the investigation was shifted from Shabbur to Hemant Dubey who was later arrested by this accused police officer.

(h) The role of the accused police officer H.M. Vichare in allowing the Organized Crime Syndicate to flourish by allowing Shabbir to escape and booking persons not connected with the crime in question and showing forged recovery from them is established. Commission of offences under Sections 3 and 34 of the MCOCA is made out. The role of accused PI Datta Ghule is also similar to that of Vichare. He became associated with the case after the arrest of Sandeep Kandar. He had played an active role in the arrest of Hemant Dubey & George Hiwale and also showing forged recoveries from them through the false panchnamas dated 23/5/2001 and 24/5/2001 and also through a forged disclosure dated 24/5/2001. He had also actively abetted the Crime Syndicate by booking persons who are not connected with the crime and thereby allowing the Organized Crime Syndicate to continue its illegal activities of selling forged stamps.

(i) The panchnamas showing the arrests of Hemant Dubey and George Hiwale and recovery has been proved to be manipulated by the officers of the Crime Branch while handling the case. Evidence

has come on record that George Hiwale was picked up on 22.5.2001 from his office in Worli with stock in hand for which no panchnama has been made. The arrest and recovery from the vendors George Hiwale and Hemant Dubey has also been proved false for that particular date and no recovery has been made from him. Moreover, the disclosure made by the local police stating that they used to purchase stamps from Madhav and sell it to Shabbir has also been carried out in the office of Hemant in the presence of his employees on 24/5/2001 and the subsequent recovery shown from the office has been proved to be false. The evidence collected does not bring out the involvement of these two individuals in the case under reference.

(j) The evidence collected during the further investigation conducted by the CBI has clearly established that police officers, Sub Inspector Vichare & Senior Inspector Datta Ghule of the Thane Crime Branch have misused their official position for pecuniary gains by diverting the investigation of the case from the actual culprits and foisting a false case on two persons not involved in the case namely Hemant Dubey and George Hiwale. They have also diverted the recoveries made from the actual culprits and shown it on the two persons Hemant & George who have been falsely implicated in the case. They have also allowed a crucial Telgi aide namely Shabbir Mushtaq Ahmed Sheikh to escape from police custody by not showing his arrest in the case in the initial stages. They have in conspiracy with the Telgi aide Shabbir aided and abetted the Organized Crime Syndicate of AKL Telgi by allowing this accused to escape and thereby the business of selling of counterfeit stamps to continue in that region.

(k) The ramifications of the offence have disclosed that the huge amounts of money

to the tune of several lakhs of Rupees have been exchanged to do and undo the things. Such prime facie satisfaction entitles the IO to verify whether there is substance in such suspicions, since, if it had really happened, it is the prime reason which had resulted in the tremendous growth of the organised crime which has developed to such an extent.

II - SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED.

The perusal of the progress report on the basis of the Affidavit of the Investigation Officer shows that the offence committed by the Organized Crime Syndicate is of very serious nature. The Hon'ble Mumbai High Court is pleased to brand such an offence as one, equivalent to waging war with the Government from inside, since it hampers the economy of the State. The Hon'ble High Court is pleased to note that such type of economic offenders do not deserve any kind of mercy. The Hon'ble Supreme Court is pleased to consider the economic offences as heinous offences than the offence of murder. The Hon'ble Supreme Court is pleased to note that there is some motive for commission of the offence like the offence of murder, but the economic offences are the cold blooded offences committed in a pre-planned manner.

In the light of the aforesaid observations of the Hon'ble High Court and the Hon'ble Supreme Court, this Hon'ble Court is urged to consider the standing of some of the accused presently in custody. The accused Dattatray Krishnaji Ghule and accused H.M.Vichare are the higher police officers. The day the offence was disclosed, they were expected to consider the seriousness of the offence. They were further duty bound to collect the information about the modus operandi and the previous

records as to whether identical offences have been registered at any police station in the State of Maharashtra and as to whether the persons involved had any role to play in such offences. The failure of the officers to act properly and their acts of omissions and commissions as surfaced through the further investigation by the present I.O. prove that the accused police officers in custody were fully aware of the scope of the offence which they were investigating. At the time of facilitating the main accused persons to remain scot free, they were fully aware as to what will be the result of their such omissions and as to in what manner they were allowing the systematic growth of the organised crime for which their co-accused stand charged. Thus, the offence committed by the police officers stands aggravated many fold since they are the persons who were trusted by the State and the society to protect their interest. Instead of acting in furtherance of such duty entrusted to them, they have joined hands with the offenders who have caused loss of thousands of crores of rupees to the State exchequer and ultimately to the objects of this State. The evidence collected against the accused persons proves that the acts of the arrested accused are connected with and incidental to the development of the organized criminal activities of counterfeiting stamps such as share transfer stamps and stamp papers etc. The material collected by the investigation against the accused in the custody is, by nature such that some of the accused have committed or attempted to commit and advocated the organized crime and the others have facilitated the commission of such offences and, therefore, all of them are liable for the punishment which will be not less than five years but which may extend to life imprisonment and they shall also be liable to a fine, subject

to the minimum fine of Rs.5,00,000/-. The perusal of the material collected shows that there are reasonable grounds for believing all the accused guilty of the offence with which they have been charged.

It is, therefore, prayed that this Hon'ble Court be pleased to consider the prayer in the application for extension of period of investigation upto 180 days and the prayer be granted.

PUNE,
DATED THIS 22nd DAY OF DECEMBER 2004.

(SHRI PRADIP D.GHARAT)
SPL.PUBLIC PROSECUTOR,
CBI."

The said report of the Public Prosecutor was filed on 22nd December 2004 along with the affidavit praying for time for a period of 180 days, as is available by virtue of the modified application of section 167 of the Code by virtue of section 21(2) of the MCOCA. While considering the said report, the Special Judge on 3rd January 2005 ordered production of the accused on 6th January 2005. The justness of the order dated 6th January 2005 has been put in issue at the instance of the Applicant in Criminal Application No. 1202 of 2005 and Criminal Application No. 1048 of 2005. Be that as it may, the 90 days'

period for submitting final report ordinarily was to expire on 5th January 2005. As per the direction already passed by the Special Judge, the report submitted by the Public Prosecutor for grant of further time to submit final report as well as the bail application preferred by the Applicants on the ground of default within the meaning of section 167(2) of the Code, read with section 21(2) of the MCOCA, was considered together. The Special Judge, by his speaking order, dated 6th January 2005, accepted the request made on behalf of the Public Prosecutor; however, granted extension of time only till 20th January 2005 and not for 180 days as was originally prayed.

05. As the extended time was to expire on 20th January 2005, the Public Prosecutor filed further report before the Special Judge praying for further time to submit final report under section 173 of the Code. The said report dated January 20, 2005, reads thus:

IN THE COURT OF SPECIAL JUDGE FOR
MCOCA CASES

COURT OF SESSIONS AT PUNE

State (CBI) Versus Sandeep Krishna Kandar & others in RC10/2004 EOU-VI/CBI/N.Delhi Crime No.PS 131/2001 of PS Thane Nagar, U/S 120-b r/w Sec. 109, 216, 218, 255, 259, 260, 261, 263(a), 420, 471, 34IPC r/w 63(a)&(b)of Bombay Stamp Act and Sec.3(1),i, ii, (2), 3(4), 3(5) & 4 & Sec 24 of the MCOC Act r/w sec.13(1)(d) of P.C.Act 1988.

V/s

1. Dattatraya Krishnaji Ghule
2. Hitendra M. Vichare
(both lodged at Thane Central Prison, Thane.).

REPORT INDICATING THE PROGRESS OF THE INVESTIGATION AND THE SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED BEYOND THE SAID PERIOD OF 105 DAYS.

MAY IT PLEASE YOUR HONOUR :

I, Shri Pradip D. Gharat, the Special Public Prosecutor for CBI in Stamp related cases (Telgi Cases) do hereby most respectfully state and submit as under:

1) I say that I have called for a further detailed Affidavit of the investigation officer in this case, viz., Shri S.Balasubramony, Dy.Superintendent of Police, CBI, EO-III, New Delhi, and he has informed me of progress of the investigation.

I - PROGRESS OF THE INVESTIGATION

a) Shri S. Balasubramony, Dy. Superintendent of Police, CBI, EO-III, New Delhi, has continued the investigation in this case after the kind order of this Hon'ble Court on 6.1.2005. He has submitted a detailed affidavit in respect of the investigation conducted so far and as to the reasons for which he wants the time period extended upto 75 days for further investigation.

b) I have carefully perused the contents of the affidavit placed before me by him and I annexe the same to this report for the kind perusal of this Hon'ble Court.

c) From the perusal of the affidavit, it is seen that some vital information has been received by the IO at this juncture which shows that the scrutiny of the said information is very much necessary for leading of the investigation in the right way to find out the culpability of the other persons, if any. He had expressed the possibilities of some more arrests if required, of the persons who may liable for the offences forming part of the present transaction under investigation.

d) The further investigation by the IO shows that he had recorded the statements of some more persons to find out the appropriations of the illegal funds forming part of the present offence. In the light of the said statements, the IO requires time to verify the appropriations of the funds and to find out as to in what manner the funds have been appropriated. The seizure of such funds is necessary to complete the investigation in this case, also making the persons responsible for such intentional appropriation of the funds and the persons who are party to the offence.

e) The perusal of the affidavit also shows that an application for various scientific tests including Brain Mapping

including Narco Analysis, Polygraph (Lie Detector Test) as well as T-300 test is submitted before the Ld. Chief Judicial Magistrate, Thane. The Ld. Chief Judicial Magistrate, Thane, is pleased to issue notices to both the accused to submit their say on the said application. The copies of the said application have been served upon the advocates of both the accused in the Court of the Ld. Chief Judicial Magistrate, First Class, itself on the date of the presentation of the application, i.e., on 10th January 2005. The advocates for the accused have been directed to submit their say on the said application on 25th January 2005, the adjournment to which date, they have not opposed. As can be seen from the affidavit, the fate of the further investigation depends on the revelations through the further interrogations in the light of the scientific tests on the accused, if the said prayer is granted by the Court. In the light of the material collected so far, such revelations will be crucial and will result in the headway in the progress of the investigation.

(f) The perusal of the case diaries show that the investigation yet is at sensitive stage. The IO has to seize the documents and record the statements of the concerned persons while he will be investigating the aspect of the illegal funds generated during the course of same transaction in commission of the present offence and the investigation will be worthwhile for him to get further opportunity to take to its logical end and to go to the root of the matter.

(g) It has also to be seen that the previous charge sheets have been filed by the accused Police Officers in the Court of the Ld. Judicial Magistrate, Thane, who in turn has committed the said charge sheets to the Court of the Ld. Addl. Sessions Judge at Thane. The IO has intimated the said Court of the

application of provisions of MCOCA in this case on 12.10.2004. It has been further prayed to forward the records and proceedings in respect of the said charge sheets to this Hon'ble Court. However, the Ld.Addl. Sessions Judge is pleased to direct the IO to obtain the Certified Copies of the records and proceedings if he requires the same for the purpose of investigation and the original papers would be forwarded to this Hon'ble Court only after filing of the final charge sheet with the orders of this Hon'ble Court. The IO has therefore submitted the application for Certified Copies of records and proceedings through me, for which I was directed to pay the copying charges. In my humble submissions, the CBI is not required to pay the copying charges as can be seen from the overall perusal of the concerned rules and the sections of the law. I am therefore called upon to satisfy the Court on the said aspect and hence the application is pending before the said Court. The investigation of the officers stands hampered till the time he receives the copies of the documents enumerated above relevant for the purpose of his investigation.

II) SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED

As can be seen from the progress in the investigation, the investigation is at very sensitive stage and if the accused are set at liberty at this stage, they will definitely tamper with the evidence and also with the witnesses since the accused are influential persons. The same will affect the investigation adversely.

The perusal of the progress report on the basis of the Affidavit of the Investigation Officer shows that the offence committed by the Organized Crime Syndicate is of very serious nature. The

Hon’ble Mumbai High Court is pleased to brand such an offence as one, equivalent to waging war with the Government from inside, since it hampers the economy of the State. The Hon’ble High Court is pleased to note that such type of economic offenders do not deserve any kind of mercy. The Hon’ble Supreme Court is pleased to consider the economic offences as heinous offences than the offence of murder. The Hon’ble Supreme Court is pleased to note that there is some motive for commission of the offence like the offence of murder, but the economic offences are the cold blooded offences committed in a pre-planned manner.

In the light of the aforesaid observations of the Hon’ble High Court and the Hon’ble Supreme Court, this Hon’ble Court is urged to consider the standing of some of the accused presently in custody. The accused Dattatray Krishnaji Ghule, and accused, H.M.Vichare are the higher police officers. The day the offence was disclosed, they were expected to consider the seriousness of the offence. They were further duty bound to collect the information about the modus operandi and the previous records as to whether identical offences have been registered at any police station in the State of Maharashtra and as to whether the persons involved had any role to play in such offences. The failure of the officers to act properly and their acts of omissions and commissions as surfaced through the further investigation by the present I.O. prove that the accused police officers in custody were fully aware of the scope of the offence which they were investigating. At the time of facilitating the main accused persons to remain scot free, they were fully aware as to what will be the result of such omissions on their part and as to in what manner they were allowing the systematic

growth of the organised crime syndicate for which their co-accused stand charged. Thus, the offence committed by the police officers stands aggravated many fold since they are the persons who were trusted by the State and the society to protect their interest. Instead of acting in furtherance of such duty entrusted to them, they have joined hands with the offenders who have loss of thousands of crores of rupees to the State exchequer and ultimately to the objects of this State. The evidence collected against the accused persons proves that the acts of the arrested accused are connected with and incidental to the development of the organized criminal activities of counterfeiting stamps such as share transfer stamps and stamp papers etc. The material collected by the investigation against the accused in the custody is, by nature such that some of the accused have committed or attempted to commit and advocated the organized crime and the others have facilitated the commission of such offences and therefore, all of them are liable for the punishment which will be not less than five years but which may extend to life imprisonment and they shall also be liable to a fine, subject to the minimum fine of Rs.5,00,000/-. The perusal of the material collected shows that there are reasonable grounds for believing all the accused guilty of the offence with which they have been charged.

It is therefore, prayed that this Hon’ble Court be pleased to consider the prayer in the application for extension of period of investigation upto 75 days and the prayer be granted.

PUNE,
DATED THIS 20th of January 2005.

(PRADIP D. GHARAT)
SPL. PUBLIC PROSECUTOR,

CBI."

That report was favourably considered by the Special Judge by his order dated 20th January 2005. However, the period was extended only till 21st February 2005 and not as prayed in the report. It may be mentioned that the order passed on January 20, 2005, by the Special Judge extending time to file report till 21st February 2005 is not challenged before this Court.

06. As the time granted by the Special Judge was to expire on 21st February 2005, the Public Prosecutor once again submitted another report before the Special Judge praying for further extension by 30 days. This report was filed on 16th February 2005. The said report reads thus :

" IN THE COURT OF SPECIAL JUDGE
FOR MCOCA CASES
COURT OF SESSIONS AT PUNE

State (CBI) ... APPLICANTS
Versus
1. Dattatraya Krishnaji Ghule
2. Hitendra Manohar Vichare ... RESPONDENTS
(both lodged at Thane

Central Prison, Thane).
In RC 10/2004 EOU VI/CBI/New Delhi-Crime No. 131/2001 of PS Thane Nagar.

REPORT INDICATING THE PROGRESS OF THE INVESTIGATION AND THE SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED FOR A PERIOD OF 30 MORE DAYS.

MAY IT PLEASE YOUR HONOUR

I, Shri Pradip D. Gharat, the Special Public Prosecutor for CBI in Stamp related cases (Telgi cases) do hereby most respectfully state and submit as under :

I say that I have called for a further detailed Affidavit of the investigation officer in this case, viz., Shri S. Balasubramony, Dy. Superintendent of Police, CBI, EOU-III, New Delhi, and he has informed me of progress of the investigation.

I - PROGRESS OF THE INVESTIGATION

a) Shri S. Balasubramony, Dy. Superintendent of Police, CBI, EO-III, New Delhi has continued the investigation in this case after the kind order of this Hon'ble Court on 20.1.2005. He has submitted a detailed affidavit in respect of the investigation conducted so far and as to the reasons for which he wants the time period extended upto 30 more days for further investigation.

b) I have carefully perused the contents of the affidavit placed before me by him and I annexe the same to this report for the kind perusal of this Hon'ble Court.

c) From the perusal of the affidavit, it is seen that some vital information that has been received by the IO is under process and investigation is being carried out in that direction, which may lead to the culpability of other persons

involved in this case and their arrests if required.

d) The further investigation by the IO conducted on the statements of some more persons to find out the appropriations of the illegal funds forming part of the presence offence is in progress and more evidence is coming to light. It is again reiterated that, in the light of the said statements, the IO requires time to verify the appropriations of the funds and to find out as to in what manner the funds have been appropriated. Also the seizure of such funds is necessary to complete the investigation in this case, also making the persons responsible for such intentional appropriation of the funds and the persons who are party to the offence.

e) The accused persons have not co-operated with the investigating process. Hence, conducting of various scientific tests including Brain Mapping, Narco Analysis, Polygraph (Lie Detector) and P-300 tests is necessary. They have refused to undergo the tests in the written reply filed before the CJM's Court, Thane. The Court is yet to give its verdict on the same. The application stands submitted as back as January 03. It is again reiterated the fate of the further investigation depends on the revelations through the further interrogations in the light of the scientific tests on the accused. If the said prayer is granted by the Court in the light of the material collected so far, such revelations will be crucial and will result in the headway in the progress of the investigation. Also due to the adjournment of application from time to time by the concerned Court, the issue is yet to be decided.

f) It is again reiterated that the perusal of the case diaries of the IO shows that the investigation yet is at

sensitive stage and more corroborative evidence is to come on record regarding the aspect of the illegal funds transferred for aiding and abetting the organized crime syndicate of AKL Telgi. It is further stated that the investigation in progress will be worthwhile for him to get further opportunity to take it to its logical end and to go to the root of the matter.

g) As stated in my earlier affidavit, the records pertaining to the earlier charge sheet filed by the Thane Crime Branch have not been received by the IO in this case. The same has also not been transferred to this Hon'ble Court despite the request of the IO for the same. Also the prayer of the IO to obtain certified copies/copies of the same free of costs has been rejected by the Sessions Judge. It is again stated that the investigation of the case stands hampered till the time the copies are received by the IO.

II) SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED

As can be seen from the progress in the investigation, the investigation is at very sensitive stage and if the accused are set at liberty at this stage, they will definitely tamper with the evidence and also with the witnesses since the accused are influential persons. The same will affect the investigation adversely.

The perusal of the progress report on the basis of the Affidavit of the Investigation Officer shows that the offence committed by the Organized Crime Syndicate is of very serious nature. The Hon'ble Mumbai High Court is pleased to brand such an offence as one, equivalent to waging war with the Government from inside, since it hampers the economy of the State. The Hon'ble High Court is pleased to note that such type of

economic offenders do not deserve any kind of mercy. The Hon'ble Supreme Court is pleased to consider the economic offences as heinous offences than the offence of murder. The Hon'ble Supreme Court is pleased to note that there is some motive for commission of the offence like the offence of murder, but the economic offences are the cold blooded offences committed in a pre-planned manner.

In the light of the aforesaid observations of the Hon'ble High Court and the Hon'ble Supreme Court, this Hon'ble Court is urged to consider the standing of some of the accused presently in custody. The accused Dattatray Krishnaji Ghule, and accused, H.M.Vichare are the higher police officers. The day the offence was disclosed, they were expected to consider the seriousness of the offence. They were further duty bound to collect the information about the modus operandi and the previous records as to whether identical offences have been registered at any police station in the State of Maharashtra and as to whether the persons involved had any role to play in such offences. The failure of the officers to act properly and their acts of omissions and commissions as surfaced through the further investigation by the present I.O. prove that the accused police officers in custody were fully aware of the scope of the offence which they were investigating. At the time of facilitating the main accused persons to remain scot free, they were fully aware as to what will be the result of such omissions on their part and as to in what manner they were allowing the systematic growth of the organised crime syndicate for which their co-accused stand charged. Thus, the offence committed by the police officers stands aggravated many fold since they are the persons who were trusted by the State and the society to

protect their interest. Instead of acting in furtherance of such duty entrusted to them, they have joined hands with the offenders who have loss of thousands of crores of rupees to the State exchequer and ultimately to the objects of this State. The evidence collected against the accused persons proves that the acts of the arrested accused are connected with and incidental to the development of the organized criminal activities of counterfeiting stamps such as share transfer stamps and stamp papers etc. The material collected by the investigation against the accused in the custody is, by nature such that some of the accused have committed or attempted to commit and advocated the organized crime and the others have facilitated the commission of such offences and therefore, all of them are liable for the punishment which will be not less than five years but which may extend to life imprisonment and they shall also be liable to a fine, subject to the minimum fine of Rs.5,00,000/-. The perusal of the material collected shows that there are reasonable grounds for believing all the accused guilty of the offence with which they have been charged.

It is therefore, prayed that this Hon’ble Court be pleased to consider the prayer in the application for extension of period of investigation upto 75 days and the prayer be granted.

PUNE,
DATED THIS 16th FEBRUARY 2005.

(PRADIP D. GHARAT)
SPL. PUBLIC PROSECUTOR,
CBI."

While this report was pending consideration, the

Applicants in anticipation were advised to file bail application on the ground of default, even though the last date (extended date) for submitting final report under section 173 of the Code was still not over. The bail applications were filed on 18th February 2005. The report submitted by the Public Prosecutor was taken up for consideration by the trial Court on 21st February 2005 on which date following order came to be passed.

> "Heard the learned Counsels for the Applicant as well as the learned Special Public Prosecutor. Since Senior Counsel appearing for Accused No.1 Ghule is not available today and sought adjournment, adjournment is granted till 23-2-2005 and further detention of the accused is extended till 25-2-2005."

It appears that on 22nd February 2005, the Special Judge was on leave due to demise of one of his family members. On 23rd February 2005, when the report of the Public Prosecutor and the bail applications were taken up for

consideration, when once again adjournment was sought on behalf of the accused which request was acceeded to by the Special Judge and the matter stood adjourned to 25th February 2005. On 25th February 2005, the Special Judge considered the report submitted by the Public Prosecutor. In the first place, it has observed that no new grounds have been made out in the present report submitted by the Public Prosecutor and no mention about further progress of investigation is stated. The learned Judge then proceeded to consider the argument of the Special Public Prosecutor that though additional grounds in the application were not mentioned, there is tremendous progress in the investigation, which is at crucial stage and the prosecution does not want to disclose some of the facts at this stage. The learned Judge also adverted to the argument advanced by the Special Public Prosecutor that during investigation, it is revealed that some more Government officials are involved in the case and it is necessary to arrest them. Further, the prosecution is also required to conduct narco-analysis and other tests on the accused and hence extension was required. The

learned Judge has also referred to the fact that Police Case Diary was produced before the Special Judge to reassure the Court about the progress of the investigation and the learned Judge, on perusing the same, has found that the case diary reflects involvement of some more officers and they are yet to be arrested. However, the learned Judge then proceeds to observe that the prospect of arrest of other persons in the case can be no justification for further detention of the accused. The learned Judge then went on to observe, while referring to the observations made in his order dated 20th January 2005, that the prosecution can continue with the investigation even after submitting charge sheet (final report) in accordance with the provisions of section 173(8) of the Code. Taking that view of the matter, the learned Judge then observed that though some scientific tests such as narco-analysis test, was required to be carried out, further detention of the accused was not required. Hence, he observed that the application deserved to be rejected. However, in para 4 of the same order, the learned Judge has adverted to the situation in which the matter was

required to be adjourned although the report of the Public Prosecutor was filed on behalf of the prosecution well in advance on 16th February 2005. The matter was adjourned at the instance of the accused on 21st February 2005 and again on 23rd February 2005. In this peculiar situation, the learned Judge proceeded to observe that in order to enable the prosecuting agency to submit the final report, it is just and necessary to extend further detention of the accused, at least for 7 days, i.e., till 4th March 2005. Accordingly, the report submitted by the Public Prosecutor was partly allowed and time was extended till 4th March 2005.

07. The justness of the abovesaid view taken by the Special Judge was questioned before this Court at the instance of the prosecution by way of Criminal Revision Application Nos. 61 of 2005 and 62 of 2005 respectively. The said applications were, however, disposed of by order dated March 4, 2005. It is noted in the said order that the maximum period upto which the final report can be filed in respect of the offence under the special enactment is upto 180

days, which was to expire on 6th April 2005, indeed, subject to the extension to be granted by the Special Judge after the period of 90 days. The grievance made before this Court by the prosecution was that, time granted by the Special Judge only till 4th March 2005 was insufficient for the prosecution to submit final report having regard to the complexity of the case and the nature of investigation which was at a crucial stage. It was, therefore, contended that the Special Judge committed manifest error in limiting the time to file final report. Instead of going into the correctness of the diverse contentions raised, this Court relegated the parties before the Special Judge by requiring the Public Prosecutor to present his further report giving justification for further extension and observing that it is only when the Court was to refuse further extension, the question of examining the grievance raised in the revision applications would arise for consideration of this Court. The order as passed on March 4, 2005, is reproduced in its entirety, which reads thus :

"1. These Applications have been filed by the State, questioning the justness of the order passed by the Special Judge under M.C.O.C. Act, Pune dated 25th February 2005, granting extension to the prosecution for filing charge-sheet, only till 4th March 2005, instead of one month, as originally prayed. It is not in dispute that the last date available to the prosecution to file charge-sheet as per the statutory provision will be up to 6th April 2005, as 180 days will expire on that date.

2. In this backdrop, it is contended that the Court below has committed manifest error in extending time only till 4th March 2005, which extended period was insufficient for the prosecution to file the charge-sheet, having regard to the complexity of the case and the nature of investigation, which is at a crucial stage.

3. However, after hearing the Counsel for the parties, without expressing any opinion on the merits of the contentions raised before this Court, in my view, the State has rushed to this Court instead of availing of option before the Special Judge by presenting report of the Public Prosecutor, giving justification for further extension. It is only when that Court was to refuse further extension, the question of examining the grievance raised in the present Application would arise for consideration of this Court.

4. Accordingly, both these Applications are disposed of with liberty to the Applicant State to move necessary report of the Public Prosecutor before the Special Judge, M.C.O.C. Court, which in turn, will have to be decided on its own merits in accordance with law.

5. It is once again made clear that this order shall not be understood as

expression of opinion on the merits of the contentions available in the proceedings before the lower Court in any manner whatsoever.

6. Both the applications are disposed of on the above terms."

08. Consequent to the observations made by this Court in its order dated March 4, 2005, the Public Prosecutor submitted further report for extension of time for submitting final report by 23 more days. The said report reads thus :

" IN THE COURT OF SPECIAL JUDGE
FOR MCOCA CASES
COURT OF SESSIONS AT PUNE

State (CBI) ... APPLICANTS
Versus
1. Dattatraya Krishnaji Ghule
2. Hitendra Manohar Vichare ... RESPONDENTS
(Both lodged at Thane Central Prison, Thane).
IN RC 10/2004 EOU VI/CBI/New Delhi - Crime No. 131/2001 of PS Thane Nagar.

REPORT INDICATING THE PROGRESS OF THE INVESTIGATION AND THE SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED FOR A PERIOD OF 23 MORE DAYS.

MAY IT PLEASE YOUR HONOUR

I, Shri Pradip D. Gharat, the Special Public Prosecutor for CBI in Stamp related cases (Telgi Cases) do hereby most respectfully state and submit as under :

1) I say that the Investigation Officer, Shri S. Balasubramony has reported it to me that he is not in the position to submit the charge-sheet before this Hon'ble Court within the time limit of 7 days as granted by this Hon'ble Court through its Order dated 25th February 2005 and it is very much necessary for him to avail of the period of at least 23 days more in order to complete all the formalities in the investigation in order to file the charge-sheet before this Hon'ble Court. I have called for a further detailed Affidavit of the Investigation officer in this case, viz., Shri S. Balasubramony, Dy. Superintendent of Police CBI, EOU-III, New Delhi, and he has informed me of progress of the investigation.

I) PROGRESS OF THE INVESTIGATION

a) Shri S. Balasubramony, Dy. Superintendent of Police, CBI, EO-III, New Delhi has continued the investigation in this case after the kind order of this Hon'ble Court on 20.1.2005. He has submitted a detailed affidavit in respect of the investigation conducted so far and as to the reasons for which he wants the time period extended upto 23 more days for further investigation.

b) I have carefully perused the contents of the affidavit placed before me by him and I annexe the same to this report for the kind perusal of this Hon'ble Court.

c) From the perusal of the affidavit, it is seen that the investigation is controlled by the hierarchy of CBI officers up to the level of Director General of CBI and the progress of the investigation is required to be reported to them, so also before the filing of the charge-sheet the whole material is required to be placed before such hierarchy of officers. He has further

reported that the fact that he had directed me to submit the application for extension of [period for investigation as back as on 16th February 2005 and the pendency of the said application till 25th February 2005 coupled with the fact that he also had to attend the Court on all the dates of hearing i.e. on 17-02-2005, 18-02-2005, 21-02-2005, 23-02-2005 and finally on 25-02-2005 be also taken into consideration since through out all this period considering the time span required for him for the to and fro journey to the Court, very small portion of time was at his disposal to conduct the investigation. On 16-02-2005, when the application for extension of period was submitted, it had been reported by him to me that some vital information that has been received by him is under process and investigation is being carried out in that direction, which may lead to the culpability of other persons involved in this case and their arrests if required.

d) He had also further reported to me that the further investigation conducted by him on the statements of some more persons to find out the appropriations of the illegal funds forming part of the present offence is in progress and more evidence is coming to light. It is again reiterated that, in the light of the said statements, the IO requires time to verify the appropriations of the funds and to find out as to in what manner the funds have been appropriated. Also the seizure of such funds is necessary to complete the investigation in this case, also making the persons responsible for such intentional appropriation of the funds and the persons who are party to the offence.

e) The application of the CBI praying for permission to conduct the narco-analysis test and other tests has not yet been decided. On the application which was

submitted as back as on 17-12-2004 before the said Court. Hence, conducting of various scientific tests including Brain Mapping, Narco Analysis, Polygraph (Lie Detector) and P-300 tests is necessary. It is again reiterated, the fate of the further investigation depends on the revelations through the further interrogations in the light of the scientific tests on the accused if the said prayer is granted by the Court. In the light of the material collected so far, such revelations will be crucial and will result in the headway in the progress of the investigation. That report was submitted before the Special Judge on 4th March 2005 itself. The report was taken up for consideration before the Special Judge and after hearing the parties, it was kept on 5th March 2005. On 5th March 2005, the matter was fully argued before the Special Judge as can be seen from the order passed by the Court on that date, which reads thus :

f) It is again reiterated that the perusal of the case diaries of the IO shows that the investigation yet is at sensitive stage and more corroborative evidence is to come on record regarding the aspect of the illegal funds transferred for aiding and abetting the organized crime syndicate of AKL Telgi. It is further stated that the investigation in progress will be worthwhile for him to get further opportunity to take it to its logical end and to go to the root of the matter. The prosecution is ready to place such material before this Hon’ble Court but not willing to disclose the material to defence at this stage U/s 19 of MCOC Act, 1999, which, if disclosed, will sabotage the prosecution case.

g) The IO in this case therefore requires a period of 23 days more for the purpose of filing the charge-sheet before this

Hon’ble Court.

II) SPECIFIC REASONS FOR THE DETENTION OF THE ACCUSED.

This Hon’ble Court is pleased to extend the period for investigation keeping the accused in custody till 4th March 2005. This Hon’ble Court is pleased to observe that the extension is to enable the prosecution to submit the final report, which the prosecution interprets as the period granted for winding up the investigation against the accused. However, this Hon’ble Court is pleased to express satisfaction that some more persons are involved in this case and that the prosecution can continue the investigation after submitting the report U/s. 173 Cr.P.C.

The prosecution is, therefore, compelled to submit through these specific reasons, at the outset, that the proviso to the Sub-section 2 of section 21 lays down that if it is not possible to complete the investigation within the said period of 90 days, the Special Court SHALL EXTEND THE SAID PERIOD ON THE REPORT OF THE PUBLIC PROSECUTOR indicating the progress of the investigation and the specific reasons for the detention of the accused. The averments are advanced since till date, this Hon’ble Court has not refused to extend the period for the purpose of investigation.

Thus, careful scrutiny of the said provision shows that the point for decision of the Special Judge is not merely to grant extension of period for investigation since to continue with the investigation while the valuable information is being collected, is the right of the prosecution, but, the point for consideration is as to whether the accused is entitled to bail as of right under default if the investigation cannot be completed within 90 days. Therefore,

the interpretation of the proviso, in my humble submission, is that the Public Prosecutor has to place the report indicating the progress of the investigation and the said Court and set forth the specific reasons for the detention of the accused beyond the said period of 90 days.

IN OTHER WORDS, THIS HON'BLE COURT IS URGED TO CONSIDER THE INTENTION OF THE LEGISLATURE WHICH IS WHETHER TO GIVE THE BENEFIT OF THE SAME TO THE ACCUSED AS AND BY WAY OF BAIL UNDER DEFAULT. THE INTENTION FOR REPORTING AND PLACING THE SPECIFIC REASONS FOR CONSIDERATION BEFORE THE SPECIAL JUDGE FURTHER IS, TO DECIDE AS TO WHETHER IT IS SUCH WHICH MAKES OUT THE PRIME FACIE GUILT OF THE ACCUSED. ONCE THE MATERIAL ALREADY COLLECTED AGAINST THE ACCUSED IN CUSTODY IS SUCH, THAT, THE PRIMA FACIE GUILT OF THE ACCUSED THROUGH THE MATERIAL COLLECTED STANDS ESTABLISHED, THEN, THE ACCUSED SHOULD NOT GET BENEFIT OF DEFAULT THROUGH BAIL CONSIDERING THE SERIOUSNESS OF CRIME AND TO GIVE AN OPPORTUNITY TO THE PROSECUTION TO UTILISE THE MAXIMUM PERIOD AS DEMANDED OUT OF THE TOTAL PERIOD OF 180 DAYS.

At this juncture it is submitted that to cover all the facets of the investigation is the job of the Investigation Officer. Therefore, it has to be considered that granting liberty to the accused should not make it possible for them to adversely affect the investigation and to tamper with the witnesses, documents and records.

As can be seen from the progress in the investigation, the investigation is at a very sensitive stage and if the accused are set at liberty at this stage, they will definitely tamper with the evidence and also with the witnesses since the accused are influential persons. The same will affect the investigation

adversely.

The perusal of the progress report on the basis of the Affidavit of the Investigation Officer shows that the offence committed by the Organized Crime Syndicate is of very serious nature. The Hon'ble Mumbai High Court is pleased to brand such offence as one, equivalent to waging war with the Government from inside, since it hampers the economy of the State. The Hon'ble Supreme Court is pleased to note that there is some motive for commission of the offence like the offence of murder, but the economic offences are the cold blooded offences committed in a pre-planned manner.

In the light of the aforesaid observations of the Hon'ble High Court and the Hon'ble Supreme Court, this Hon'ble Court is urged to consider the standing of the some of the accused presently in custody. The accused Dattatray Krishnaji Ghule and the accused H.M. Vichare are influential police officers. The day the offence was disclosed they were expected to consider the seriousness of the offence. They were further duty bound to collect the information about the modus operandi and the previous records as to whether identical offences have been registered at any police station in the State of Maharashtra and as to whether the persons involved had any role to play in such offences. The failure of the officers to act properly and their acts of omissions and commissions as surfaced through the further investigation by the present IO prove that the accused police officers in custody were fully aware of the scope of the offence which they were investigating. At the time of facilitating the main accused persons to remain scot free, and not arresting them they were fully aware as to what will be the result of such omissions on their part and as to in what manner they were

allowing the systematic growth of the organized crime syndicate for which their co-accused stand charged. Thus, the offence committed by the police officers stands aggravated many fold since they are the persons who were trusted by the State and the society to protect their interest. The evidence collected against the accused persons proves that the acts of the arrested accused are connected with and incidental to the development of the organized criminal activities of counterfeiting stamps such as share transfer stamps and stamp papers, etc. The material collected by the investigation officer against the accused in the custody is, by nature such that some of the accused have committed or attempted to commit and advocated the organized crime and the others have facilitated the commission of such offences and therefore, all of them are liable for the punishment which will be not less than five years but which may extend to life imprisonment and they shall also be liable to a fine, subject to the minimum fine of Rs.5,00,000/-. The perusal of the material collected shows that there are reasonable grounds for believing all the accused guilty of the offence with which they have been charged.

On the point as to why the provisions of application of section 167(2) have been made applicable as amended has to be considered at initial stage. For the said reason, at the first instance it has to be seen that the provisions of Section 167(2) have not been considered to be deleted but, the legislature has considered the modified application of the said law.

For the said purpose, the statement and object of the said Act has to be kept in mind. The legislature has specifically considered that the illegal wealth and black money generated by the organized

crime is very huge and has serious adverse effect on our economy. The existing legal framework that is the Penal and procedural laws and the adjudicated system are found to be rather inadequate to curb or control the meanest of organized crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions.

At this juncture, therefore, at the cost of repetition, it has to be seen that the legislature did not stop in providing through the Sub-Section 4 that the person arrested under the provisions of this Act are not entitled to bail unless the Public Prosecutor has given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application, the Court is satisfied "THERE ARE REASONABLE GROUNDS FOR BELIEVING THAT HE IS NOT GUILTY OF SUCH OFFENCE" and that he is not likely to commit any offence while on bail. The Legislature has also provided through Subclause 5 that the accused shall not be granted bail if it is noticed by the Court that he was on bail in any offence under this Act or under any other Act on the date of offence in question. Not only that but the provisions of Subclause 21 also shows that in a particular case after the initial period of first fifteen days is over, the police officer can seek the custody of the accused person any time till the trial starts on filing a written statement seeking the custody of such person and for the delay in seeking the custody. This provision shows as to what extend the seriousness of the offence has been considered by the Legislature.

The provisions of section 21(2) have to be analyzed in the light of the object of the implementation of law. For the said purpose the provision of Section 19 are also important, which are on the point of protection of witnesses, which make it

crystal clear that the Legislature has intended that certain materials and information are to be kept in secret and Court is bound to maintain that secrecy through out. If section 19 of the MCOC Act provides such protection even after filing of the charge-sheet then, the severity of such drastic provisions assumes additional importance if the offence is under investigation. Therefore, the point of giving benefit to the accused through bail on failure to file the charge-sheet within the stipulated period has also to be considered in the light of the said provision.

The said observations find mention in the judgment of the Mumbai High Court in the case of Mohamed Shakil Mohamed Shafi Jariwala and ors. v/s State of Maharashtra in Criminal Appeal No.379 of 2000 decided on February 16, 2000, a copy of which has been submitted before this Hon'ble Court. In the said judgment, the Hon'ble Mumbai High Court is pleased to observe that the applicability of the provisions of MCOC Act is part of the process of law playing down to what extend and under what circumstances liberties of a person is curtailed. Therefore, the person against whom the provisions of MCOC Act have been applied cannot seek shelter under the umbrella of the provisions of Article 21 of the sacrosanct constitution so far as the provisions of the Act have been complied with. It had also been observed that section 19 of MCOC Act shows as to how sternly the Legislature wanted to deal with the person who violates the provisions of Section 19. The Hon'ble High Court has further observed that the Legislature thought in their wisdom that such stringent provisions are necessary because the said Act deals with such incorrigible organized criminals whose activities cannot be controlled and it is not ordinarily possible to bring them to

books by the ordinary law of the land. The Hon'ble High Court is further pleased to observe that MCOC Act is a special enactment intended to deal with a separate class of criminals, which excludes the provisions of Section 167 of the Code of Criminal Procedure which is a general Act.

Once again, in the light of the said observations and the other provisions of the MCOC Act, the provisions of section 21(2) have to be considered. Once the Legislature has provided for extension of period up to 180 days while the accused are in custody, it is crystal clear that the Legislature does not intend that the accused detained under MCOC Act should get benefit of default or failure of the prosecution agency to file the charge-sheet after the period of 90 days is over once an application is presented before the Special Judge by the Public Prosecutor supported by his report on the progress of the investigation and the specific reasons for the extension of the custody on which THE SPECIAL JUDGE SHALL EXTEND THE PERIOD OF INVESTIGATION shows that it has been made mandatory on the part of the Special Court to extend the period once the prayer on the basis of report of the progress of the investigation and the specific reasons for the extension of the custody are placed before the Hon'ble Special Judge. The interpretation of the said provision shows that the only requirement for the extension of period is the replacement of progress report and the specific reasons for such extension, which reflect that (1) the investigation is in progress and (2) sufficient material to establish the guilt of the accused has already been collected.

It is also submitted that if the prosecution comes with the case that their investigation is not completed and the indefeasible right to bail for

default under Section 167(2) should not accrue to the accused during the period of further 90 days, with due respect to the Court, the Court has to take care that merely because the charge-sheet is not filed after the expiry of 90 days till the completion of 180th day, the accused are not bailed out if their case is not of bail under the provisions of Section 21(4), 21(5) and 21(6). If the right of the prosecution for extension of period upto 180 days is denied, it will defeat the very object of the incorporation of the said provisions by the Legislature. The further interpretation of the said section is that if the prosecution fails to file the charge-sheet within the said period of 180 days, then definitely, there cannot be any excuse for the further detention of the accused persons.

It is therefore, prayed that this Hon'ble Court be pleased to consider the prayer in the application for extension of period of investigation upto 30 more days and the prayer be granted.

PUNE
DATED THIS 04TH MARCH 2005.

(PRADIP D.GHARAT)
SPL. PUBLIC PROSECUTOR,
CBI."

That report was submitted before the Special Judge on 4th March 2005 itself. The report was taken up for consideration before the Special Judge and after hearing the parties, it was kept on 5th March 2005. On 5th March 2005, the matter

was fully argued before the Special Judge as can be seen from the order passed by the Court on that date, which reads thus :

> " Heard Counsels for both sides at length till late hours, i.e., till Court time is over. Therefore, there is no time to pass the order today. Hence, it is adjourned till 7th March 2005. Therefore, the order dated 4.3.05 passed below Exh.1 extending the detention of the accused is continued till 7.3.05."

On 7th March 2005, the Special Judge proceeded to pass order on the subject report submitted by the Public Prosecutor. The learned Judge observed that merely because report has been filed by the Public Prosecutor would not oblige the Court to grant further time for submitting the final report, unless the Court was satisfied that further detention of the accused was necessary. It is then observed that although specific reasons have been given in the report, but they are repetition of the reasons which were given in the previous application. The learned Judge has

adverted to the three principal contentions raised on behalf of the prosecution in para 5 of its order. Firstly, that during the further investigation, some more material has come to light about the illegal gratification received by the accused from Kingpin Abdul Karim Ladsab Telgi; and it is necessary to verify the fact of ill-gotten funds by making enquiry; secondly, the application filed by the Prosecutor for permission to conduct Narco-analysis test and other tests on the accused was still undecided before the same Court - and it is necessary to collect the evidence by conducting such tests on the accused; and thirdly, that the investigation is at the sensitive stage and more corroborative evidence is likely to come on record. The learned Judge has also adverted to the submission canvassed before him that the prosecution is ready to place the relevant material before the Court maintaining secrecy as provided under section 19 of the MCOCA, and which was done by submitting close envelope containing relevant information. The learned Judge then has adverted to the fact that he perused the information so revealed, but took the view that, as already

observed by him in the earlier order, such evidence can be produced subsequently as per the provisions under section 173(8) of the Code. The learned Judge has also observed that the points taken in the present report were reiteration of clauses 1(a) to (e) of the earlier progress report. The learned Judge, in para 6 of the impugned decision, has referred to the fact that from the Case Diary, it revealed that recently some additional evidence by recording the statements of some witnesses was collected by the investigating officer. Further statements of the witnesses under section 164 of the Code also came to be recorded on 28-2-2005. Further, on 1-3-2005, statement of one more witness came to be recorded, but, once again, observed that such evidence can be produced after submission of charge sheet as was the view expressed by him in his earlier order. The learned Judge, in para 7, however, considered the last submission canvassed by the Public Prosecutor that there are large number of documents and clinching evidence on account of which the investigating officer could not prepare the final report till 4-3-2005 and would, therefore, require some more time. The

learned Judge then recorded his opinion that considering the gravity of the offences and voluminous evidence, it was just and proper to grant some more reasonable time to the investigating agency, so as to submit the final report with documents and its copies. Taking that view of the matter, the report of the Public Prosecutor submitted on behalf of the prosecution for extension of time was partly allowed by extending time till 16th March 2005.

09. It is not in dispute that on 16th March 2005, the final report has been submitted by the prosecution, which is within the extended period; and, later on, on 22nd March 2005, complete final report has been filed. In the meantime, on 9th March 2005 (i.e., after the order passed by the Special Judge on March 7, 2005), accused Hitendra Vichare preferred Criminal Application No. 1666 of 2005 challenging the decision of the Special Judge dated 25-2-2005 whereby, according to him, custody of the accused was wrongly extended till 4-3-2005. Besides, the Applicant in Criminal Application No. 1202 of 2005 caused amendment to

his application on 22nd March 2005 whereby, he is questioning the orders passed by the Special Judge on 6th January 2005 as well as order dated 25-2-2005 being inappropriate.

10. Insofar as challenge to order dated 6th January 2005 at the instance of the Applicants accused is concerned, that was on the argument that the prosecution had filed application dated December 17, 2004 for extension of investigation period through the Special Public Prosecutor under the signature of Deputy Superintendent of Police, C.B.I., Camp Mumbai, which application did not stand the test of requirements of section 167(2) of the Code, read with section 21(2) of the MCOCA, as it was not a report submitted by the Public Prosecutor fulfilling the requirement of the said provisions. However, this argument has not been pursued further after the report of the Public Prosecutor dated 22nd December 2004 was produced on record before this Court, which, according to the prosecution, was the basis to pass order dated 6th January 2005. The said report fulfils all the requirements of the said provisions and is in conformity with the

exposition of the Apex Court in the case of Hitendra Vishnu Thakur and others v. State of Maharashtra and others, reported in 1994 S.C.C. (Cri) 1087. In that sense, the challenge to order dated 6th January 2005 passed by the Special Judge is no more in issue before this Court and, therefore, it is unnecessary to burden this judgment with the arguments canvassed by the Counsel for the Applicants in that behalf relying on the decision of the Apex Court in Hitendra Thakur's case (supra).

11. As mentioned earlier, the Applicants have not challenged the order passed by the Special Judge dated 20th January 2005 extending the time till 21st February 2005. Therefore, the only controversy that remains to be examined in the present Judgment is regarding the justness of the order passed by the Special Judge on 25-2-2005 and the subsequent order dated 7-3-2005 respectively.

12. According to the Applicants accused, as the reasons indicated in the report submitted by the Special Public Prosecutor did not find favour

with the Special Judge, as a necessary corollary, the Special Judge had no option but to reject the prayer for further time to submit final report as was requested and immediately proceed to release the Applicants accused on bail as indefeasible right had crystalised in their favour on the finding so recorded by the Special Judge. According to the Applicants accused, the Special Judge has categorically observed that no new ground is forthcoming and further progress of the investigation has not been disclosed in the report. Insofar as other aspects relied upon by the prosecution, the Special Judge took the view that those matters need not delay the filing of the final report as the prosecution could always submit further report in terms of section 173(8) of the Code. It was contended that on recording this opinion, the Special Judge could not have denied the relief of bail to the Applicants, in view of the exposition of the Apex Court in the case of Hitendra Thakur (supra). It is then contended that the order as passed by the Special Judge on 25th February 2005, or, for that matter, on 7th March 2005, is an order unknown to the provisions of the Code. It is submitted that the

question of trial Court directing custody of the accused would arise only when the Court has taken cognisance of the offence and not at the stage of section 167; whereas the rigours of section 167 of the Code, read with section 21(2) of the MCOCA, are that, on failure to submit final report within the statutory period, or the extended period, as the case be, indefeasible right is crystalised in favour of the accused to be released on bail and the Court cannot continue the custody of such accused any further. It is submitted that no other ground except the grounds available under section 167 of the Code read with section 21(2) of the MCOCA, can be relevant for extending the time to file final report. Whereas, the Special Judge has shown indulgence to the prosecution on account of the adjournment caused at the instance of the accused, as can be discerned from para 4 of the order dated 25-2-2005. Assuming that the same can be reckoned, it would be relevant only for continuation of custody between 21st February 2005 till 25th February 2005 and not thereafter. It is further submitted that on the earlier occasion, the Court having recorded opinion that

the prosecution can submit further report under section 173(8) of the Code, it was not open for the Special Judge to entertain successive application. It is further argued that insofar as the reason, which has weighed with the Special Judge for granting further time to the prosecution as can be discerned from the order dated March 7, 2005, the same is only for preparation of charge sheet, or making copies of the documents, which is essentially an administrative or ministerial function and not integral part of the investigation as such. If it is so, in view of the exposition of the Apex Court in para 65 in the case of Hitendra Thakur (supra), that cannot be a ground for extending time. As a consequence, the indulgence shown by the Special Judge in his order dated 7th March 2005 to the prosecution cannot stand to reason. It is also argued that the purport of section 167 of the Code is that it is not a provision to detain the accused or to remand the accused to custody, but the same provides for the consequences in respect of matters where investigation cannot be completed in specified time. Reliance was also placed on the

observations in the decision of our High Court in the case of Mohammad Alimuddin vs. State of Maharashtra, reported in 2003 ALL MR (Cri) 474, particularly para 31, to contend that it was not open to the Special Judge to look into any other record, except the report of the Public Prosecutor, to satisfy himself about the specific reasons and necessity of extension of time to submit final report. On the above arguments, it is contended that the orders passed by the Special Judge dated 25th February 2005, as well as 7th March 2005, deserve to be set aside, and, instead, the Applicants ought to be released on bail, as indefeasible right had crystalised in their favour on account of default of the investigating agency in submitting final report within time.

13. On the other hand, the Special Public Prosecutor would contend that he supports the operative direction/order passed by the Special Judge in his orders dated 6th January 2005, 20th January 2005, 25th February 2005 as well as 7th March 2005, although he would criticise the approach of the Special Judge and the finding

recorded therein for not accepting the reasons for further time to submit final report as was pressed into service on behalf of the prosecution. He submits that, indeed, the Special Judge had discretion to extend the time or refuse the request made on behalf of the prosecution for further time to submit final report, but that power is not uncontrolled one. He submits that in a case, such as the present one, where the report submitted by the Public Prosecutor records the progress of the investigation and the stage of the investigation, coupled with the assertion about the necessity to further investigate, so as to corroborate the material collected so far, and giving specific reasons for continued custody of the accused, it is not open to the Special Judge to compel the prosecution to submit a truncated final report (charge sheet) on the reasoning that it is always open to the prosecution to file further report under section 173(8) of the Code. He submits that the question of filing report by the investigating agency under section 173 arises only after investigation is complete in all respects. He further submits that preparation of

charge sheet on the basis of materials collated during the investigation is a process of investigation. He submits that the reliance placed on the observations in Hitendra Thakur's case (supra) is inapplicable to the fact situation of the present case. According to him, the observations in Hitendra Thakur's case (supra) were made in the context of the fact that the accused was in custody for over six months (beyond 180 days) and indefeasible right had already accrued to the accused unlike in the present case, where, 180 days from the date of arrest was not completed which was the outer limit provided by the statute. Moreover, the prosecution has been diligent in the present case, as, much before the expiry of the last date for submitting final report, report of the Public Prosecutor was submitted for further time giving specific reasons and recording satisfaction of the Public Prosecutor regarding the necessity to extend the time as prayed by the prosecution. Learned Special Public Prosecutor submits that it is well-settled that section 167 is not a provision for bail, but is a provision prescribing for maximum period within which

investigation has to be completed by the investigating agency. He submits that the Court having noticed the progress of the investigation on the basis of material produced before it, it was not open to the Court to refuse the request made on behalf of the prosecution for further time to submit final report. It would be a different matter if the Court was to record satisfaction that no further progress has been made in the investigation or that the investigation is already complete. In such a case, it may be open to the Court to reject the request for extension of time made on behalf of the prosecution, but not otherwise. According to him, the approach of the trial Judge requiring the prosecution to file a truncated charge sheet would inevitably sabotage the further investigation. Inasmuch as, the charge sheet to be filed would require disclosure of names of witnesses and if those names were to be disclosed, having regard to the complexity of the investigation and sensitivity of the offence, coupled with the fact that the accused were resourceful persons, there was every possibility of tampering with the evidence or the witnesses

named in the charge sheet and obviously affect the fair investigation of the case. Such course could have been adopted only if the statutory period was likely to get over but not in a case where there was ample time upto 6th April 2005. Learned Special Public Prosecutor further contends that the approach of the Special Judge is ex facie self-contradictory as can be seen from the reasons recorded in the impugned orders. According to him, this Court will look at the substance of the order passed by the Special Judge and not the form of the order. The substance of the order is to extend the time in terms of provisions of section 167(2) of the Code read with section 21(2) of MCOCA and the impugned orders obviously take colour from the power bestowed on the Special Judge under the said provisions. It is submitted that the Special Judge, having accepted the stand of the prosecution that there was material on record showing involvement of other Government officials, it was preposterous to direct the prosecution to proceed to file charge sheet without giving fair opportunity to the investigating agency to inquire into all the

relevant matters. Serious grievance has been made by the learned Special Public Prosecutor that on the one hand, the application preferred by the prosecution for permitting the investigating agency to subject the Applicants to Narco-analysis test was kept pending since 10th January 2005. No orders were passed on the said application, though a crucial aspect and integral part of the investigation process; whereas, the Special Judge expected the investigating officer to submit final report without requiring the said accused to undergo the relevant test which would expose them or facilitate revelation of matters relevant for proper investigation of the offence, which was of severe magnitude. Learned Public Prosecutor submits that the approach of the Special Judge was manifestly wrong, for the test which has been applied by him was whether further detention of the accused was required or not. That is not the test to be applied for considering the report of the Public Prosecutor for extension of time in terms of provisions of section 167(2) of the Code read with section 21(2) of the MCOCA. Learned Counsel further submits that as the prosecution had approached

this Court by way of revision applications, questioning the justness of the approach of the lower Court in the orders dated 20th January 2005 and 25th February 2005, it was not open for the Special Judge to once again rely on the same reasons which weighed with him on the earlier occasion to deny further time as was originally prayed, and, instead, grant only limited time for submitting the final report. According to him, the order passed by the Special Judge on 25th February 2005, or, for that matter, 7th March 2005, was one of granting further time to the prosecution to submit final report and not only an order directing continued detention of the Applicants-accused beyond the permissible period as is contended by the Applicants-accused. According to him, the order dated 25th February 2005, or, for that matter, 7th March 2005, passed by the Special Judge is essentially for just and necessary cause which can be legitimate reason to extend time to submit final report as was prayed on behalf of the prosecution. It is submitted that from para 7 of the order dated 7th March 2005, it is amply clear that the Special Judge was satisfied about the reason pressed into

service on behalf of the prosecution to grant further time to submit final report and that has been accepted by the Special Judge. The learned Public Prosecutor further contends that the question of considering prayer for bail at the instance of the Applicants would arise only if indefeasible right had accrued in their favour. The said right can accrue only on expiry of the statutory period of 180 days and in particular after expiry of 90 days till 180 days, subject to the orders to be passed by the trial Judge in that behalf. In the present case, as time to submit final report has been extended from time to time, the question of such right having accrued to the Applicants -accused does not arise at all and for which reason, the prayer for bail on the ground of default was unavailable to the Applicants. On the above arguments, the learned Public Prosecutor submits that the applications before this Court are devoid of merits and the same be dismissed.

14. Before I proceed to examine the rival submissions, as reliance was placed on the decision of the Apex Court in Hitendra Thakur’s

case (supra), I shall presently refer to the legal position stated in the said decision. In para 20, the Apex Court has adverted to the object behind the enactment of section 167 of the Code. It is held that it is a provision introduced with intention that the detention of an accused person should not be permitted pending investigation for any unreasonably longer period. Section 167(2) of the Code prescribes the outer limit within which the investigation must be completed. It is then observed that section 167 of the Code read with section 20(4) of the TADA (section 21(2) of the MCOCA, which is anologous) is, strictly speaking, not a provision "for grant of bail", but deals with the maximum period during which a person accused of an offence may be kept in custody to enable the investigating agency to complete the investigation and file charge sheet, if necessary in the Court. The said provision creates an indefeasible right in an accused person in case of "default" by the investigating agency to complete the investigation within the maximum period prescribed, or, extended, as the case be, to seek an order for his release on bail.

15. In para 21 of the same decision, it is reiterated that the objection to the grant of bail to an accused on account of the default of the prosecution to complete the investigation and file the challan within the maximum period prescribed or within the extended period has to be limited to cases where either the factual basis for invoking default clause is not available, or, the period for completion of investigation has been extended and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender, etc., can weigh with the Court at that stage to refuse the grant of bail to an accused on account of the default of the prosecution.

16. Much stress was placed on the statement of law occurring in para 22 of the same decision, wherein it is observed that the Court has no power to remand the accused to custody beyond the period prescribed or extended under the said provisions as the case be, if the challan is not filed, only on the ground that the accusations against the accused are of a serious nature or

the offence is very grave. This observation, in my opinion, militates against the argument of the Applicants that the Court has no power to order continued detention of the accused. On the other hand, if the Court was to grant time to the prosecution to file charge sheet, implicit in that direction, the Court would assume and exercised power to direct continued detention of the accused till such time.

17. In para 23 of the said decision, the Apex Court has dealt with the question as to what should be the contents of the report of the Public Prosecutor for extension of time to submit final report, so that the Court can assume jurisdiction to pass appropriate order thereon. It is observed that if the report of the Public Prosecutor does not fulfils the criteria provided for in the section, then it is no report in the eye of law and in such a case, the Court would be justified, rather obliged, to accede to the request for grant of bail on the ground of default to the accused. Para 23 of the said decision is of some relevance. The same is reproduced thus :

" We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the

proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is

filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr. Madhava Reddy or the Additional Solicitor General Mr. Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution

of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an

> accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to able to object to the grant of extension." (emphasis supplied)

18. From the exposition in para 23, it is seen that the precondition to enable the Court to assume jurisdiction to pass appropriate direction so as to extend time to complete investigation and submit final report, is that, the Public Prosecutor is required to submit report in terms of section 21(2) of the MCOCA. The said report must indicate the progress of the investigation and provide for specific reasons for the detention of the accused beyond the period of 90 days. Besides, the report should indicate that the Public Prosecutor has applied his mind to those aspects and has recorded his subjective satisfaction regarding necessity of further time for the progress of the investigation and specific reasons for the detention of the accused beyond the specified period.

19. It, therefore, follows that insofar as

the first 90 days' period is concerned, in view of the purport of section 167(2) of the Code, read with section 21(2) of the MCOCA, there is no question of invoking indefeasible right on account of default by the investigating agency in the completion of the investigation. From 91st day till 180 days, the indefeasible right of the accused is dependent on the factum of extension granted by the concerned Court to complete the investigation. If the Court was to grant extension, if applied on behalf of the prosecution, the question of accrual of indefeasible right in favour of the accused does not arise at all. The right is only an inchoate right which crystalises if the investigating agency fails to submit report before the maximum statutory period prescribed or extended by the Court, as the case be. Indeed, in terms of the legal position expounded by the Apex Court in Hitendra Thakur's case (supra), the Court has discretion to extend the time to file final report upto maximum period of 180 days. However, that discretion has to be exercised judiciously. The Court cannot be oblivious of the fact that the law enacted by the Legislature provides

maximum period for completing the investigation upto 180 days. The Legislative intent of providing extended period for completion of investigation of the criminal cases under the special enactment (MCOCA) is obviously because of the typical offences specified under the said Act and the complexity of investigation thereof. Ordinarily, therefore, the Court should not reduce or restrict the period for completing the investigation, unless there is very strong reason to do so - such as no further investigation is necessary or that no further progress in the investigation has been reported. In any case, it is not open to the Court to force the prosecution to file a truncated final report on the specious reasoning that the prosecution can always file further report under Section 173(8) of the Code. The filing of further report under Section 173(8) of the Code is not the rule. Nay, it should be eschewed when the maximum period provided by the statute (180 days) was not over, especially when in a given case, the record reveals that investigation was continually in progress and at a crucial stage. For, requiring the prosecution to file a truncated final report at such stage is

fraught with the danger of forcing the prosecution to disclose the course of investigation which in turn would provide opportunity to the accused to sabotage the further investigation. If, however, the investigating agency was to withhold any material collected by it to be made part of the truncated final report required to be filed because of the Court's order, so as to obviate disclosure of the course of investigation, in all probability, it (prosecution) may run the risk of later on being confronted with the legal objection that the said material which was already available cannot be allowed to be brought on record within the meaning of Section 173(8) of the Code. Accordingly, the Court should be loath to curtail the maximum time period provided by the Statute for completing the investigation, unless there is strong reason to do so. Any other view would mean that the Court can direct the investigating agency to complete the investigation and file final report in lesser time than the maximum period specified by the Statute. That argument cannot be countenanced.

20. In the present case, initially there was controversy about the nature of report submitted by the Public Prosecutor for seeking further time on the first occasion. Reliance was placed on document at page 33 of the Paper Book in Criminal Application No. 1666 of 2005 on behalf of the Applicants. However, the prosecution has produced on record copy of the report submitted by the Public Prosecutor on behalf of the prosecution dated 22nd December 2004. The later document obviously fulfils the requirements of section 21(2) of the MCOCA. Accordingly, Counsel for the Applicants did not press the matter further to question the validity of the order passed by the Special Judge on 6th January 2005. As mentioned earlier, the further time granted by the Special Judge under order dated 6th January 2005 was upto 20th January 2005, but before expiry of the said period, the Public Prosecutor submitted another report on 18th January 2005 praying for extension upto 75 days. The said report has found favour with the Special Judge, but the Special Judge by order dated 20th January 2005 granted further time only till 21st February 2005. The fact remains that this order has not

been challenged by the Applicants. In the circumstances, we are now relegated to a situation that there was valid order operating against the Applicants and in favour of the prosecution to complete the investigation and submit the final report on or before 21st February 2005. This, however, is not endorsing seal of approval on the approach of the lower Court or to the reasons recorded in those orders, or, for that matter, to the limited extension granted to the prosecution to complete the investigation within the specified period mentioned therein. Indeed, it is open to the Special Judge to initially grant lesser time than the maximum statutory period of 180 days to complete the investigation, but if the prosecution approaches the Court for further extension of time, that request ought to be considered on its own merit by enquiring into the fact about the progress of the investigation made after the extension was granted on the earlier occasion and the need to investigate the matter further and the like.

21. Be that as it may, as the investigation

could not be completed even before February 21, 2005, though had made substantial headway and was at a crucial stage, another report was submitted by the Public Prosecutor on 16th February 2005 for extension of time upto 30 days. During the pendency of the said report of the Public Prosecutor, the Applicants-accused preferred bail application on 18th February 2005 in anticipation that the report of the Public Prosecutor dated February 16, 2005, will be rejected; and if so, indefeasible right would enure in their favour entitling them to be released on bail forthwith. The said report and the bail application were considered together by the Special Judge for the first time on 21st February 2005, on which date, however, came to be adjourned to 23rd February 2005 on the request made by the accused. Once again, on 23rd February 2005, adjournment was sought on behalf of the accused which was acceeded to by the Special Judge and the matter stood over to 25th February 2005. By order dated 21st February 2005, custody of the accused was continued till 25th February 2005 obviously because the report of the Public Prosecutor for further time to submit final report upto 30 days

was still pending for consideration and was adjourned at the instance of the Applicants. The Special Judge finally proceeded to pass order on the said report on 25th February 2005. Although the Special Judge has mentioned that the prosecution has approached for extension with same grounds, without mentioning any further progress in the investigation, at the same time, he has accepted the position as is evident from the record that investigation of the case was continually in progress. In the first place, the lower Court is not right in observing that the prosecution has approached for extension on the same grounds without mentioning any further progress in the investigation. For, the Court has noted the stand of the prosecution that the prosecution was not wanting to disclose some facts at this stage having regard to the sensitivity of the investigation. On fair reading of the impugned order, it is seen that the said stand of the prosecution was verified by the lower Court. Nonetheless, the Special Judge declined to accede to the request made on behalf of the prosecution inspite of the proper report submitted by the Public Prosecutor, essentially

on the reasoning that the prosecution can continue with the investigation of the case after submitting charge sheet (final report) in accordance with the provisions of section 173(8) of the Code. The fact that request of the prosecution for permission to conduct Narco analysis and other tests on the Applicants and other accused was pending since January 2005 before the same Court has been answered by observing that that procedure can continue and the prosecution can file further report in terms of section 173(8) of the Code.

22. The abovesaid approach of the trial Judge, in my opinion, is wholly inappropriate and manifestly wrong. All that the Special Judge was expected to consider was whether the report submitted by the Public Prosecutor indicates the further progress of the investigation and also provides for specific reasons for the detention of the accused beyond the period of 90 days and discloses subjective satisfaction reached by the Public Prosecutor on those aspects. Going by the report as was filed and which was the subject matter of consideration before the Special Judge

dated 16th February 2005, the same clearly fulfilled the basic requirements. Once it is disclosed in the report that the investigation is still incomplete and the maximum period prescribed by law of 180 days was still available, coupled with the fact that specific reasons have also been disclosed in the report, the Special Judge had no reason to require the prosecution to rush through the investigation or to file a truncated charge sheet (final report), especially in matters of the kind with which we are dealing, which is a sensitive matter having wide ramifications and more so involving complex nature of investigation. It would have been another matter if the Special Judge was to record a finding that no progress in the investigation has been made after the time was extended by him on the earlier occasion, or, that he was satisfied that the investigation was already complete. No such finding has been recorded by the Special Judge. On the other hand, on fair reading of the order of the Special Judge dated 25-2-2005, it is amply clear that the learned Judge has virtually accepted the position that the investigation is still incomplete and had

made tangible progress in the investigation. To that extent, there is substance in the grievance made on behalf of the prosecution that the approach of the Special Judge was self-contradictory and unknown to the requirements of law. I also find substance in the argument of the Special Public Prosecutor that the impugned order will have to be read as a whole so as to give natural meaning to the ultimate conclusion or order recorded by the trial Judge, exercising discretion in favour of the prosecution of granting further time to the prosecution to file the final report. In other words, the adverse finding reached by the trial Judge against the prosecution on some aspect cannot be said to be rejection of the request for extended time in toto. In my view, it is open to the prosecution to support the impugned orders while criticising the reasons/findings recorded by the trial Judge which are adverse to the prosecution.

23. The next question is: whether it is open for this Court to examine those aspects. In my opinion, the answer should be plainly in the

affirmative, having regard to the nature of order passed by this Court on March 4, 2005. The justness of the view expressed by the Special Judge in order dated 25-2-2005 as well as the observations made in order dated 20th January 2005 were put in issue before this Court by the prosecution. This Court without expressing any opinion on the merits of the said contentions, relegated the parties before the Special Judge with liberty to the prosecution to submit further report on behalf of the prosecution justifying further extension of time beyond 4th March 2005. Consequent to the said liberty, the Public Prosecutor presented report before the Special Judge on 4th March 2005 and the Applicants appeared in the said proceedings and contested the same on merits. It is evident from the record that the Applicants did not question the justness of the order passed on 25-2-2005 by the Special Judge before this Court and, in any case, later on participated before the Special Judge in respect of the report submitted by the Public Prosecutor for further time in terms of the liberty granted by this Court. Rather, they invited the impugned order dated March 7, 2005,

passed by the trial Judge granting extension of time to file final report till March 16, 2005. Whereas, the Applicants have now been advised to challenge even the decision of the Special Judge dated 25-2-2005 only by filing Criminal Application No. 1666 of 2005 on 9th March 2005. The other accused has carried out amendment only on 22nd March 2005 to the pending Criminal Application challenging the earlier order so as to also challenge the order dated 25-2-2005 passed by the Special Judge. If it is so, the Applicants accused cannot be heard to question the order passed by the Special Judge dated 25-2-2005, having acquiesced of the order of this Court dated March 4, 2005. It necessarily follows that by virtue of the said order (dated February 25, 2005), the prosecution was entitled to complete the investigation and submit final report till 4th March 2005.

24. There is additional reason which has weighed with the Special Judge so as to show indulgence to the prosecution to submit final report till the extended dated, i.e., 4th March 2004. In para 4 of the order dated February 25,

2005, , the Special Judge has adverted to the fact that the report was filed by the Public Prosecutor well in advance on 16th February 2005, which was posted for consideration on 21-2-2005, being the last date for submitting the final report in terms of the earlier order passed by the Special Judge dated 20th January 2005. On that date, however, the Applicants accused sought adjournment on the ground of unavailability of Senior Counsel and which request was acceeded to by the Special Judge. In that backdrop, the Special Judge, while adjourning the matter to 23-2-2005, extended custody of the Applicants-accused till 25-2-2005, which, in substance, means that the time to file charge sheet/final report stood extended till 25-2-2005. However, once again, on 23-2-2005, adjournment was sought on behalf of the Applicants-accused which was acceeded to by the Special Judge and the matter stood over to 25-2-2005. The Special Judge, having realised the piquant situation in which the prosecution would be placed because of the abovesaid conduct of the accused, or, for that matter, the mistake of the Court, proceeded to grant time to the prosecution till 4th March

2005 by observing that it is just and necessary to extend the time to enable the prosecution agency to submit the final report within such extended time. If the Applicants-accused are permitted to question this approach of the Special Judge, that would result in a situation of awarding premium to the Applicants-accused for their own wrong as it is at their instance the matter was adjourned beyond February 21, 2005, although the report was filed by the Public Prosecutor for extension of time as early as February 16, 2005. Taking any view of the matter, no interference is warranted at the instance of the Applicants in respect of order passed by the Special Judge, dated 25-2-2005, which is in favour of the prosecution.

25. The question that, however, arises is: Can the Applicants be permitted to challenge at least the order passed by the Special Judge dated 7th March 2005. Although it is open to the Applicants to question this order, once again I am inclined to accept the submission of the prosecution that it is open to the prosecution to support the operative order passed by the Special

Judge even though it would criticise the reasons/findings recorded by the Special Judge in the same order, which are adverse to the prosecution. It, therefore, becomes necessary to closely examine the decision of the Special Judge dated 7th March 2005. I find substance in the argument of the prosecution that the order as passed by the Special Judge is in exercise of the power bestowed on him in terms of section 167(2) of the Code, read with section 21(2) of the MCOCA. In that, the Special Judge has extended the time to submit final report upto 16th March 2005, although the prosecution had asked for 30 days time from 4th March 2005 as mentioned in the report of the Public Prosecutor filed for that purpose. The Special Judge in the first place has observed that all that the Court was required to consider is whether the grounds given by the prosecution are reasonable and acceptable, or, not. To that extent, no fault can be found with the opinion of the Special Judge. The question, however, is, whether the material on record would justify the opinion that the request made on behalf of the prosecution was neither reasonable nor acceptable. In my opinion, it is not

possible to sustain the view taken by the trial Judge, having gone through the subject report of the Special Public Prosecutor submitted to the Special Judge dated 4th March 2005. It not only mentions about the progress of the investigation made after the previous extension, but provides for specific reasons for the detention of the accused beyond the period of 90 days and also indicates application of mind by the Public Prosecutor about his subjective satisfaction on those counts. Once such a report was tabled before the Special Judge and which was supported by the materials produced on record before him, albeit for the limited purpose of the perusal and satisfaction of the Judge, then it was not open to the Special Judge to decline the prayer for further extension, which was not exceeding the statutory period of 180 days, having regard to the sensitivity, wide ramifications and the complexity of the investigation in the case on hand. It is relevant to note that the Special Judge has not recorded a finding that the investigation has made no progress after extension was granted on the earlier occasion, nor has he opined as of fact that investigation

was already complete and there was no good reason forthcoming for non-filing of the final report/charge sheet. It is only in that situation the Special Judge could be justified in observing that the request of the prosecution for extension of time is neither reasonable nor acceptable. On the other hand, the opinion recorded by the Special Judge in the impugned decision plainly accepts the position that there has been notable progress in the investigation and that the investigation is at a crucial stage and that further investigation was also necessary. However, the Special Judge then proceeds to observe that the further investigation can continue and final report can be submitted by the prosecution in terms of section 173(8) of the Code. This approach, in my opinion, is manifestly wrong. The provision of section 167 of the Code, as observed by the Apex Court, is a provision to "complete" the investigation within reasonable time. It is not a provision for bail. The Special Judge proceeds to observe that there is no reason to continue custody of the accused. That approach clearly overlooks the cardinal principle that if the

investigation of a case of such a complex nature was still in progress and was continuing and at a crucial stage, it is preposterous to observe that further custody of the accused named in such a case will not be necessary. It would have been a different matter if the maximum statutory period (180 days) was already over, so as to observe that indefeasible right is crystalised in favour of the accused. That is not the basis on which the Special Judge has proceeded to examine the matter. The fulcrum on which the Special Judge proceeds to consider the matter, in my view, is untenable in law. If it is so, merely because the Special Judge has made some observations against the prosecution, that need not deter this Court to uphold the operative order of the Special Judge while setting aside the erroneous opinion expressed by the Special Judge which is adverse to the prosecution. Only such course would subserve the ends of justice. Be that as it may, the impugned decision dated 7th March 2005 in para 7 clearly accepts the explanation offered on behalf of the prosecution as justification for grant of extension for submitting final report.

26. To get over this position, the Counsel for the Applicants accused would contend that the fact of gravity of offence and time required to prepare charge sheet because of voluminous evidence cannot be the basis to exercise power under section 167(2) of the Code, read with section 21(2) of the MCOCA. This contention was pressed into service relying on the observations of the Apex Court in para 65 of the Hitendra Thakur's case (supra). Indeed, if the act that remained to be done by the prosecution was only ministerial or administrative one, the Applicants-accused would be justified in their contention that that cannot be the sole basis to exercise discretion in favour of the prosecution. However, as observed earlier, in the present case, the record clearly establishes that the investigation was still incomplete and was continually in progress and it had reached a crucial stage. In such a situation, the Special Judge was obliged to accede to the request of the prosecution to grant further time as the report of the Public Prosecutor presented before the Special Judge fulfilled the requirements of

section 167(2) of the Code read with section 21(2) of the MCOCA. Viewed in this perspective, I see no reason to interfere at the instance of the Applicants so as to overturn the order passed by the Special Judge granting further time, which, in effect, is for granting time to the prosecution to submit final report, passed in exercise of powers under section 167(2) of the Code read with section 21(2) of the MCOCA.

27. Counsel for the Applicants-accused contended, relying on the observations in para 31 in the case of Mohammad Alimuddin (supra), that it was not open to the Special Judge to look into any material except the report submitted by the Public Prosecutor. This submission clearly overlooks that the observation made in para 31 in the case of Mohammad Alimuddin (supra) are relevant to the facts of that case. In that case, the Court found as of fact that the report of the Public Prosecutor does not at all adumbrate the progress of the investigation. If it is so, the said lacuna cannot be filled by relying on the materials produced before the Court, which were collected during investigation.

In other words, in that case the material produced by the prosecution was to supplant the contents of the report of the Public Prosecutor. That is not the fact situation in the present case. I have already taken the view that the reports of the Public Prosecutor as filed, on which the impugned orders are passed, not only indicate the further progress of the investigation, but also gives specific reasons for the detention of the accused beyond the period of 90 days and discloses application of mind by the Public Prosecutor, recording his subjective satisfaction on those counts. Accordingly, decision in Mohammed Alimuddin (supra) will be of no avail to the Applicants. As mentioned earlier, even the Special Judge, in his order dated 7th March 2005, has recorded that further progress in the investigation has been made and investigation was continuing and that the prosecution had asserted that it does not want to disclose some facts at this stage and had made available relevant materials for the perusal of the Court. This course was adopted only to ensure fairness in the investigation, having regard to the sensitivity of the case and high

Government officials involved in the commission of the offence, coupled with the fact that the accused were resourceful persons and disclosure of those facts in the report would sabotage the investigation which was at a crucial stage. Indeed, when the report of the Public Prosecutor fulfils the requirements of law and the above stand of the prosecution is sought to be buttressed with the aid of relevant materials, the same can be looked into by the Court.

28. Indeed, the Special Judge has opined that the report submitted by the Public Prosecutor was reiteration of the earlier report. However, even this observation does not commend to me. It clearly overlooks the difference between the substance of the two reports submitted by the Public Prosecutor. Besides, it is stated in the report that in the peculiar facts of the present case, the prosecution may not like to disclose all the material in the report, as, that may sabotage further investigation of the case, which was at a crucial stage. In one sense, the Special Judge has accepted the said plea of the prosecution. The Special Judge has also perused

the relevant materials produced by the prosecution in close envelope for the perusal of the Court, only to buttress the stand so taken. According to the Applicants, it was not open to the Special Judge to peruse the material so produced on behalf of the prosecution and the Court ought not to have travelled beyond the contents of the report submitted by the Public Prosecutor. Indeed, the Court is to primarily satisfy itself on the basis of the contents of the report of the Public Prosecutor. That, however, does not mean that the prosecution is precluded from relying on relevant materials, which in turn, is only for the limited purpose of satisfying the Court about the correctness of the stand taken by the prosecution that it is necessary to maintain secrecy in respect of some information, which has been gathered during the course of investigation. In other words, when the report of the Public Prosecutor otherwise fulfilled all the requirements of law as in the present case, it is open to the Court to look into the materials produced by the prosecution to support the plea asserted in the report of the Public Prosecutor to arrive at an opinion on the

crucial aspect of the progress of the investigation and the ground for further detention of the accused. In my view, therefore, the Special Judge has committed manifest error in observing that no new circumstance has been spelt out in the subsequent report filed by the Public Prosecutor. On the other hand, on fair reading of the reports filed by the Public Prosecutor from time to time, it is evident that the developments that took place after filing of the earlier report are spelt out. The crucial aspect regarding the further progress of the investigation has been clearly noted. Indeed, the broad circumstances on which the prosecution asked for further time to complete the investigation in filing of the charge sheet or for that matter, for continued detention of the accused were bound to overlap. That was bound to happen especially when the Court had granted short extension of time for filing of charge sheet and the prosecution was required to move for further extension at short intervals. In other words, it would have been a different matter if the Court was to record an opinion that no further progress in the investigation is made

after the earlier extension, or that the investigation was already complete. However, in the present case, the Court has clearly opined on the basis of record before it that the investigation was still in progress and at a crucial stage. With such finding, it was not open to the Court to decline the request of the Public Prosecutor for extension of time for filing final report, as was prayed, especially when the outer limit of 180 days provided by the Statute was available. Besides, though it was specifically asserted by the prosecution that one of the obstacle faced by the investigating agency was that the Investigating Officer was required to attend Court proceedings on several dates because of successive applications filed by the Accused, however, the Special Judge has not even adverted to the said aspect, though relevant. The record does indicate that the Investigating Officer spent most of his time in attending the Court and which was a relevant fact to be considered while examining the request made by the Public Prosecutor for extension of time for completing the investigation of the case or for filing final report. Moreso when the argument of

the prosecution about the enormity as well as the involved nature of the investigation of the case has been accepted by the Special Judge in the impugned orders.

29. A priori, the applications under consideration are devoid of merits and the same deserve to be dismissed. Accordingly, all the three applications are dismissed.

30. While parting, I may express my displeasure regarding the manner in which the Advocates for the parties performed themselves during the course of hearing of the present Applications. Shri Shivade, Advocate, was appearing as Counsel instructed by Mr. Kadam. He addressed the Court till the Court rose for Lunch Break at 2.00 p.m. It was obvious that his arguments were inconclusive. He did not indicate that at 2.45 p.m., when the matter was to proceed, he will not be available for reasons beyond his control. When the matter was called out at 2.45 p.m. after the Lunch Break, Mr. Shivade did not appear before the Court. Mr. Kadam, who was instructing Mr. Shivade, appeared

and informed the Court that Mr. Shivade has gone away and he is not in a position to indicate the reasons which prevented Mr. Shivade to appear before the Court at 2.45 p.m., as no information has been left with him. Mr. Kadam then informed the Court that arguments on behalf of the Applicants be treated as closed. That is not all. Even the Advocate for the Respondents (prosecution) was absent and arrived in the Court almost after 10 minutes from the time the Court assembled after the Lunch Break at 2.45 p.m. The Court had to wait till his arrival as he was expected to give his reply. On arriving in Court, Mr. Gharat informed that he was held up before another Bench of this Court. Suffice it to observe that the Members of the Bar are expected to ensure that the minimum courtesy is extended to the Court, especially in part-heard matters, namely, to ensure that they remain present in Court when the matter is likely to be taken up for further hearing. As both Mr. Gharat and Mr. Kadam have tendered unconditional apology, I would leave the matter at that and only express a word of caution that such lapses or casual approach be eschewed by the Members of

the Bar in future.

(A.M.KHANWILKAR,J.)